



Diligent Market Intelligence

Proxy Season Preview 2025

In association with



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Editor's foreword



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After months of planning, the second Diligent Market Intelligence Stewardship Series conference in New York City was a fantastic day of panels, discussion and networking.

We were delighted to host over 140 investors, advisors and issuer representatives – including directors and general counsels – to preview the upcoming proxy season and all who attended came away with new insights and perspectives to better facilitate shareholder engagements and improve corporate governance. Thank you to our sponsors, Olshan Frome Wolosky, Sidley Austin, Schulte Roth & Zabel, Haystack Needle, Davies, Forward Global and Reevermark for helping put on such a great event.

These gatherings are increasingly important in the light of two major trends that have made the public discourse around investor expectations more challenging. One is the pushback against DEI, including legal challenges related to investor voting policies based on quotas or minimum expectations. And the second is the new guidance from the Securities and Exchange Commission (SEC) around 13D reporting requirements, which led a number of large investors to pause engagements until they received comfort that they could continue to speak directly with boards of directors.

While proxy season is on track, time will tell whether these two regulatory impacts affect the level of investor support for directors. The rise of shareholder engagement has increased support for directors and compensation proposals. Diminishing it would put both sides back in the dark.

What is clear from our event is that the composition of boards is still crucial. Whether you are looking for

independence of character, diversity of thought, or just the best possible board, all sides agree on the need to show constant engagement.

And on the investor side, there was the same focus on board quality, as well as the need to stay vigilant in the face of market risks and access high quality, standardized data on boards and governance.

Happily, Diligent Market Intelligence has a full suite of datasets, covering proxy voting, directors and governance, executive compensation, shareholder activism and vulnerability, and activist short selling, to help make sense of even the most challenging proxy season. Once you've finished digesting the insights in this report (with event coverage by DMI's Antoinette Giblin), we hope you'll request a demo of our platform.

Until the next time!





What's on the radar this season?

With 2025 expected to hold immense potential for impactful campaigns, expert panelists discussed what's focusing the minds of activists for the season ahead and how that might drive a new wave of activity.

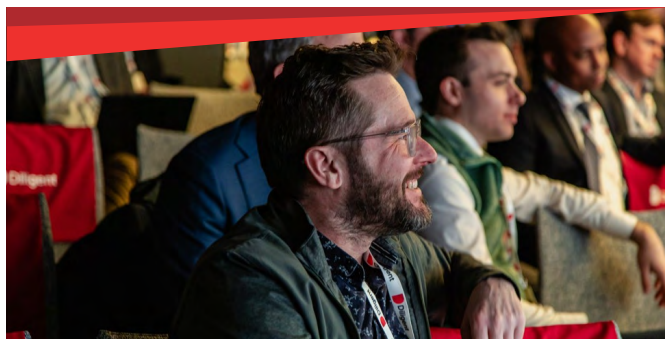
M&A

As market watchers continue to wait for the tide to turn on M&A amid movements in inflation and interest rates and an administration perceived as more open to dealmaking, a new wave of M&A-driven activism has been expected to surface in 2025 with relatively slow progress noted in the opening months of the year. "The gold rush for M&A has yet to show its face. The first two months have been a bit of a disappointment," Kai Liekefett, co-chair of Sidley's shareholder activism and corporate defense practice, told the event. The timing and pace of the anticipated uptick is being vigilantly monitored by many amid continued uncertainty in the market. "Many anticipated that interest rates would start coming down but as inflation remains steady and rises, there is less of a chance that the fed starts cutting rates as fast as people had hoped," noted Ryan Nebel, vice chair of Olshan's shareholder activism practice. Panelists also told the event that proposed tariffs under the Trump administration could also create new opportunities for activism with many companies potentially left exposed by resulting market dislocation. "Many of our clients are sitting on immense dry powder and are ready to strategically deploy it if there is a downturn in the market. If there is a dislocation that really separates the underperforming companies from their peers, we will likely see pushes for M&A at those targets," added Nebel.

As activists prepare for an environment where this long-favored value creation lever could be put to use, boards being nudged toward a sale are advised to engage and listen to all stakeholders. "I think M&A is probably one of the most complex situations a board can find themselves in and many directors haven't been through it much," Jonathan Foster, founder and managing director of Current Capital Partners, told delegates. "It's important to go slowly. Be well advised. Consider the appropriate standard and remember that it's all about maximizing long-term shareholder value. Sounds simple but can be hard to execute."

Succession planning

While investors have traditionally tended to try to avoid overt campaigns to oust senior executives due to the higher standard of proof required, recent years have seen activists become more emboldened to pursue leadership change with succession planning a key arm of



many campaigns. Aaron Atkinson, partner at Davies, told a panel focused on activist tactics that the underlying thesis of such a campaign is key while detailing three types of scenarios. “The first is the relatively rare case where you have a rockstar CEO candidate and a slate of people who have championed that CEO,” Atkinson explained. “Other campaigns may not target the incumbent CEO specifically but are more focused on serious underperformance at the company where an activist feels they must advance a majority or full slate and by extension, that involves including a CEO candidate in the mix.” The final campaign type referenced the contest led by Mantle Ridge at Air Products and Chemicals with a focus on the incumbent CEO where there is a perceived major case for change and widespread support for it.

“ Other campaigns may not target the incumbent CEO specifically but are more focused on serious underperformance at the company. ”

Changing dynamics under UPC

While many argue that the pieces in the chess game are still being worked out under the universal proxy card (UPC) regime, most agree that it has made its mark on settlement dynamics with every director now firmly in the limelight. “The UPC has had a massive impact on settlement dynamics. There is a widely held view – which I disagree with – that it’s easy to win a seat or two for an activist. This has had an impact on certain situations that would otherwise have gone to a proxy fight. I’m neutral as to whether that is good or bad but it’s a fact,” Liekefett told the opening session.

More timely engagement has also been observed in reaching such agreements. “A lot of companies have taken it upon themselves to engage with shareholders early on in the process and come to constructive resolutions with early-stage settlements,” Nebel told the gathering.

Such engagement was cited as one of the best approaches to an activist advance during a panel addressed by public company directors which also heard the need to proactively prepare. “At least once a year, every board should have a preparedness session. It doesn’t have to be a war game. It’s a time for introspection,” said Peggy Foran, chief governance officer and corporate secretary of Prudential Financial. “Then brief your board on your vulnerabilities and ask what could be done better in order to have a better year.”

Compensation

The devil is in the detail when it comes to unvested pay in compensation packages with shareholder alignment cited as a north star for investors. High insider ownership among CEOs is viewed positively by investors who want to see those at the helm thinking like owners. A strong independent board also works to ensure an appropriate counterbalance to management to deliver the required checks and balances. If metrics and performance are aligned, a larger pay packet is more likely to be viewed as justified.

AI

As regulation evolves, investors want to see disclosure around artificial intelligence oversight, especially in industries where it is most relevant such as technology or at companies where it is considered core to product development. For other industries, it is considered less pressing for now.



A new arms race

As companies continue to find creative ways to fend off activists, and those in pursuit match such efforts by finding new channels and tools to accelerate their campaigns, a new and creative arms race is observed to have taken hold.

Litigation has been one useful tool in the armour and is now firmly embedded in the activism landscape as Ele Klein, co-chair of the global shareholder activism group at Schulte, Roth & Zabel, told a panel examining activist tactics. “Litigation was a standard part of the landscape going back to 2007, and then we had a decade where you didn’t see it. It’s now back in force for the last five or six years.”

One such use in recent years saw a surge in the number of boards to overhaul their advance notice bylaw amendments in response to the rollout of universal proxy card (UPC) rules.

However, although litigation wasn’t always as available to investors when activism was in its infancy, stakes were smaller and companies had more resources, this has now changed. “Shareholders are also using the litigation system to challenge steps the companies take in order to push back against some of the defences that are put into play as we saw for example at Masimo,” noted Klein.

Activists are also investing in research by placing director candidates under the microscope with behind-the-scenes investigations. “We’re not focused on the negative. We want to know what is relevant about the individual that a shareholder might care about that could be standing in the way of efforts to run the company in a way that aims to maximize shareholder value,” Brendan Foo, co-CEO and co-founder of Forward Risk, the investigations and intelligence practice of Forward Global, told the

“ Litigation has been one useful tool in the armour and is now firmly embedded in the activism landscape. ”



conference. “This can involve court records, criminal filings, coverage and reputation around previous positions to see where they have succeeded or failed. We also look at overexaggerated credentials. We are always objective and let the chips fall where they may.”

“ Both sides are looking at additional ways to communicate with their end audiences and we have seen an extraordinary adoption of digital media to do just that.”

One of the newest weapons in the arms race, however, has seen both sides turn to digital media strategies. For companies, this has largely been focused on building directors’ digital footprint to counter the greater exposure they face under UPC, while for activists, this has opened up new channels to reach specific audiences with targeted messaging.

“Both sides are looking at additional ways to communicate with their end audiences and we have seen an extraordinary adoption of digital media to do that through social platforms, search engines, videos, and microsites,” said Rob Stamm, chief strategist, at Sugar Bowl – the social media arm of Haystack Needle. “As clients understand just how specific we can get with targeting certain audiences, they learn to tailor messaging for institutional investors or retail investors as needed and they see how it is effective.”



Core board strength in focus as pendulum swings from DEI

Amid simmering regulatory and political pressure, the opening months of 2025 have made discussion concerning diversity in the boardroom and beyond much more challenging.



Jon Foster
Board Member

Mauro Rodrigues da Cunha
Independent director and consultant

Foran
Governance Officer,
Vice President and
Corporate Secretary
Financial

January delivered a slew of executive orders designed to remove diversity, equity & inclusion (DEI) practices from various industries to “protect the civil rights of all Americans and expand individual opportunity.” Tension had already been mounting with the United States Court of Appeals striking down the Nasdaq board diversity rules a month before and conservative activist Robby Starbuck continuing to press companies to abandon their DEI and LGBTQ policies.

The presidential orders rocked the U.S. stewardship community and led many investors to remove targets for the number of female or ethnically diverse board members from their voting policies this year. Proxy advisor Institutional Shareholder Services (ISS) also moved to cut diversity factors in U.S. director election assessments pointing to “the evolving market and governmental activity.”

“You need to have diverse perspectives. That’s not going away. You need diversity of viewpoint and experience to succeed.”

“There is a lot of pressure on the issue with recent changes from many including BlackRock and ISS. I’ve been in board meetings in recent weeks where we are doing the same thing we always did with DEI but we struck those three words from all of our public disclosures,” Jonathan Foster, founder and managing director of Current Capital Partners, told a panel dedicated to the board perspective on shareholder engagement. “I think it’s important but the reality is there is not going to be the same focus.”

However, despite the shift in dialogue and the evolution in the precision of language, the core strength of the board should be kept in sharp focus. “You need to have diverse perspectives. That’s not going away. You need diversity of viewpoint and experience to succeed,” Peggy Foran, senior vice president and corporate secretary at Prudential



Financial, told the event. Delegates heard that investors will continue to look for high performing, effective boards and view composition as a critical aspect of that expectation. Board evaluation and refreshment are now more critical than ever with third party assessments highly recommended.

For activists, escaping groupthink is also seen as a positive. “Diversity of perspectives in a boardroom is beneficial whether it is gender, age, ethnicity or experience,” Ryan Nebel, vice chair of the shareholder activism practice at Olshan Frome Wolosky, told the opening session, while also noting that the changing landscape around board diversity considerations could mean one less obstacle for activists in compiling their slates. “Right now, I don’t think diversity will be touted to the level it has been in the past several years. I have been in situations where clients had to revamp their slates due to a perceived lack of diversity. Today that may not be the case.”

Whatever way stakeholders opt to navigate this new complexity, core principles of corporate governance should assist in driving the best outcomes for all. “Regardless of political or ideological viewpoint, there is a broad recognition that robust oversight by an independent and competent board is vital to a company and its investors,” said ISS, in a recent preview of the season. “Board gender or ethnic/racial diversity may not be a focal point come 2025 proxy season, but board competency is expected to receive continued scrutiny.”

Panel predictions for 2025:



“ We should get greater clarity with another year of UPC. It’s a learning process on how the pieces are moving in that chess game. More litigation as well. How the general markets perform is the wildcard. Will we see the Trump bump and more activity in capital markets? ”

—
Ele Klein, Schulte, Roth & Zabel

“ There will be a greater need for both sides to build understanding of government affairs and government relations as anti-trust continues to evolve. The situation at US Steel is one example. It’s important to understand how these factors might impact the outcome of campaigns. ”

—
Brendan Foo, Forward Global

“ If the tide turns on M&A, it might be that there are more M&A -related campaigns but who knows? Navigating the current volatile landscape will be critical. Also with the rollback of DEI, while those issues were rarely the central components of a campaign, I expect we will see campaigns even more tightly focussed on the “crunchier” issues such as dollars and cents and balance sheet repair. ”

—
Aaron Atkinson, Davies

“ For 2025, digital media strategies will be key. The director’s personal digital footprint is now more important than ever while activists are turning to social platforms to apply pressure and reach specific audiences with much greater ease than before. ”

—
Rob Stamm, Haystack Needle



“ For environmental reporting, companies need to ask if it is material to your industry. These things are very important to younger generations and will surface. There may be less disclosure but it won't be abandoned. ”

—
Peggy Foran, Prudential Financial

“ As we have seen, it's not a foregone conclusion that activists will be able to coast to victory on the back of an ISS or Glass Lewis endorsement. The candidates need to be able to articulate how they will help create long-term value in order to win over certain institutions. ”

—
Ryan Nebel, Olshan Frome Wolosky

“ When UPC started, I was sceptical and so far I have been proven wrong. The gadfly investor has yet to weaponize UPC but I think this will come and it will be a nuisance. The notion that you can get on the proxy card with just one share is wrong. ”

—
Kai Liekefett, Sidley Austin

Stewardship Series Gallery







About Diligent Market Intelligence

Diligent Market Intelligence is the leading provider of corporate governance, shareholder engagement and investor stewardship data. Trusted by advisors, investors and issuers globally, the Diligent Market Intelligence platform equips firms with the necessary information to proactively manage shareholder pressures, mitigate governance risks, and maintain a competitive edge in the market.

For more information or to request a demo:

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